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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONOS, INC.,
Plaintiff and Counter-defendant,
v.
GOOGLE LLC,
Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA
Consolidated with
Case No. 3:21-cv-07559-WHA

**SONOS, INC.'S RESPONSE TO
GOOGLE LLC'S MOTION TO AMEND
THE JUDGMENT PURSUANT TO
FED. R. CIV. P. 59(e)**

Date: December 14, 2023
Time: 8:00 a.m.
Place: Courtroom 12, 19th Floor
Judge: Hon. William Alsup

1 Sonos writes to clarify two statements in Google’s motion, Dkt. 877. Neither of these
2 clarifications requires any modification to the proposed judgment filed at Dkt. 877-2.

3 First, Google says that the Court’s order finding the ’885 and ’966 patents unenforceable
4 and invalid “moot[ed]” nine of its affirmative defenses for those patents, ranging from unclear
5 hands to implied license. Dkt. 877 at 6-7. Sonos’s position is that those defenses, at least for the
6 ’885 and ’966 patents, are forfeited and not mooted. After trial, Google raised only prosecution
7 laches and equitable estoppel in its post-trial brief on affirmative defenses. Dkt. 819. Thus, Google
8 forfeited every other affirmative defense for the ’885 and ’966 patents and may not raise those other
9 affirmative defenses on remand. *See In re Google Tech. Holdings LLC*, 980 F.3d 858, 863-64 (Fed.
10 Cir. 2020) (holding that Google forfeited arguments it failed to raise before the PTAB).

11 Second, Google says that “Sonos elected not to try the remaining claims [of the ’615 patent]
12 based on” the Court’s ruling that claim 13 is not infringed and is invalid. Dkt. 877 at 4, 6. This is
13 inaccurate. After the Court’s noninfringement ruling for claim 13, Sonos could not have pursued
14 infringement for any of the ’615 patent’s asserted claims that depend from claim 13 (claims 14-15
15 and 18-21).¹ *See Wahpeton Canvas Co., Inc. v. Frontier, Inc.*, 870 F.2d 1546, 1553 n. 9 (Fed. Cir.
16 1989). And in April 2023, the PTAB held that, among others, claims 14 and 18-25 were
17 unpatentable.² The Court then determined before trial that “the ’615 patent is out of the case,” in
18 part because Google had “long ago” “abandoned” its claims for “[i]nvalidity of claims 18, 19, and
19 25 of the ’615 patent.” Dkt. 580 at 1-2; *see also* Dkt. 588 at 27-28 (during a hearing, the Court
20 stated: “those issues, the ’615 ... those miscellaneous claims are out of the case. O-U-T.”). Thus,
21 the Court ruled that Sonos could not try the ’615 patent.

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24 ¹ In addition, independent claim 25 is substantively identical to independent claim 13, so Sonos
25 had no basis to try infringement of claim 25 (and its dependents) in view of the Court’s
noninfringement ruling for claim 13.

26 ² By that point, Google had already effectively abandoned its invalidity claims here for claims 14,
27 15, 20, 21, and 26 by failing to address those claims in its invalidity expert report in November
28 2022. *See* Fed. R. Civ. P. 37(c)(1); *Rembrandt Vision Techs., L.P. v. Johnson & Johnson Vision
Care, Inc.*, 725 F.3d 1377, 1381 (Fed. Cir. 2013) (an expert witness “may not testify to subject
information in the report was substantially justified or harmless” (citation omitted)).

1 Dated: November 8, 2023

By: /s/ Clement S. Roberts

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